



The policy–practice dichotomy: An analysis from Palawan, Philippines

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Introduction

Although the live reef fish for food trade (LRFFT) has provided a much-needed source of income for impoverished coastal communities across the Asia-Pacific region, ensuring that the trade operates sustainably has proven difficult. In Palawan Province, Philippines, the LRFFT faces substantial challenges. Years of intense fishing pressure, as well as the use of sodium cyanide to catch live fish, has resulted in significant levels of coral reef degradation and the decline of fish stocks in parts of the province (Padilla et al. 2003). Hence, fishers in some locations must now travel greater distances and for longer periods to find fish, and struggle to make ends meet as their ability to easily catch fish decreases (Fabinyi 2010). Attempts at regulation have been introduced, but implementation and enforcement of these regulations remains challenging (Dalabajan 2005, 2009; Fabinyi 2009a).

This paper analyses how attempts at governing the LRFFT in Palawan over time have been successively hindered. The paper focuses particularly on how certain features of the social² landscape in Palawan have overturned or significantly reduced the impact of various regulations. Although other factors are certainly at play — not least the sheer market demand for live fish in market countries — this paper emphasises the role of three inter-related local social themes: 1) the capacity of government institutions and legal frameworks to effectively implement regulations, 2) the distinctive culture of fisheries governance in the Philippines, and 3) the perspectives and practices of local fishers themselves. By focusing on such features, the paper aims to draw greater attention to how in a developing country context such as the Philippines, policies are not necessarily the central driver behind actual practices on the ground. The reality of this social context means that formal policy and management interventions are just one of a broader suite of factors that determine practices.

Managers involved in trying to regulate the trade are frequently well aware of many of these issues; similarly, analysts of the LRFFT in Palawan have alluded to the complicated nature of policy-making and to the “interplay of political and business dynamics” (Pomeroy et al. 2008). However, given the continuing gaps between policy and practice in many source LRFFT countries, a more explicit and detailed examination of the factors that lie behind these gaps is necessary (Mosse 2004). The history of the ways in which local factors have shaped and overturned specific management interventions in Palawan suggests that greater attention could still be paid to specific local factors that, in the end, tend to actually determine local resource use patterns. While this paper focuses on Palawan, the issues of implementation and enforcement are common to many developing countries (including most source LRFFT countries), and so the arguments presented have relevance for other locations as well.

The material for this paper is informed by long-term research on and experience with the LRFFT in Palawan by both authors. More broadly, the methodological approach used is framed by an anthropological perspective on policy, which, among other concerns, is characterised by taking the policy process itself as an object of analysis (Mosse 2004; Wedel et al. 2005). Fabinyi has conducted ongoing ethnographic fieldwork in Coron municipality in the Calamianes Islands of northern Palawan since 2005. He was based in a coastal community there for 12 months between 2005 and 2007; more recent research in 2009 included semi-structured interviews with 115 live reef fish collectors from five coastal communities around Coron. Interviews were also conducted with fish traders, and government and non-governmental organisations involved with the LRFFT in Coron town and in Puerto Princesa, the provincial capital. Dalabajan has worked closely on the LRFT in Palawan since 1998 as a policy specialist, and has co-authored several reports relating to fisheries law enforcement in the region.

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2 The use of the word “social” in this paper is a simplified term that encompasses economic, political and cultural factors as well.

Regulating the LRFFT in Palawan

As has been well documented, the LRFFT has, in many cases, been associated with significant environmental problems, such as the use of sodium cyanide and the more general problem of overfishing (Sadovy et al. 2003; Scales et al. 2006). In large part because of the environmental concerns associated with the LRFFT, there have long been and continue to be considerable efforts (by a range of organisations) directed towards increasing the sustainability of the trade. Many of the issues facing the LRFFT have been exemplified by experiences in the Philippines, and more specifically Palawan Province, where the LRFFT has increased in value and expanded since beginning in the 1980s. Currently, the LRFFT in Palawan is practiced in virtually every coastal part of the province. As elsewhere, a key concern has been the use of sodium cyanide. Cyanide testing laboratories set up by the International Marinelife Alliance (IMA) in Manila and Puerto Princesa show the range of annual averages of tested samples of live food and aquarium fishes testing positive for cyanide to be from 11% to 59% between 1993 and 2001 (Rubec et al. 2002; see also Padilla et al. 2003; Dalabajan 2005).

In the early 1990s, decision-makers in Palawan started to look more seriously at LRFFT regulation after the much publicised exposé of the IMA about the effects of an unregulated LRFFT. The provincial government in 1993 and the City of Puerto Princesa in 1992 instituted bans on the LRFFT, which evoked strong reactions from industry. The provincial ban prompted live reef fish traders and airline shippers to file a case in the Supreme Court seeking nullity of the ordinance, arguing that the prohibition would deprive them of due process and livelihood and would unduly restrict them from practicing the trade. Later in 1993, the provincial government lifted its ban except for certain species, such as the humphead or Napoleon wrasse (*Cheilinus undulatus*), humpback or panther grouper (*Cromileptes altivelis*) and some species of aquarium fishes. Ironically, in 1997, the Supreme Court ruled in favour of the original provincial ban, citing that the prohibition of the LRFFT was a lawful exercise of power to ensure, among many other goals, a balanced ecology (Supreme Court of the Philippines 1997). The City Government continues to retain its ban.



Figure 1. Palawan Province, Philippines.

In 2000, the Palawan Council for Sustainable Development (PCSD) passed Administration Order No. 2000-05, which put into effect a revised and more detailed accreditation system for culturing, catching, trading and transporting live fish species. In 2002, PCSD Resolution 97 (2002) was passed in order to prohibit the possession or use of an air compressor on a fishing boat, and a moratorium on the number of permits to trade live fish was also issued.

By the early 2000s, a range of reports by national and international organisations underscored the negative effects of the LRFFT in Palawan. Such reports emphasised the basic problem of overfishing, and analysed specific issues relating to the continuing use of cyanide, a decrease in the mean size of leopard coral grouper,³ an increase in the practice of fish cages for grouper grow-out, and some of the social impacts of the trade, such as loss of livelihood security (e.g. Conservation International 2002; Padilla et al. 2003). In 2005, the US Agency for International Development-funded Fisheries for Improved Sustainable Harvest (FISH) Project produced a policy brief on the LRFFT in Palawan, which consolidated the recent findings on the negative trends of the LRFFT in Palawan (Pomeroy et al. 2005).

³ *Plectropomus leopardus* is the most important species in the LRFFT in Palawan in terms of value and quantity.

In response to the policy prescriptions of the FISH Project report, the provincial legislative council passed Provincial Ordinance 941 in 2006, which was primarily characterised by the introduction of two new pre-conditions before LRFFT could be allowed in a municipality: the establishment of fish sanctuaries and the introduction of closed seasons. Over the course of 2006 very few municipalities complied with either of these pre-conditions, prompting the provincial Bureau of Fisheries and Aquatic Resources (BFAR) to declare a province-wide moratorium on the export of live food fish. Predictably, the traders in the municipalities were angry, and municipal leaders and fishers descended to the provincial capital, pleading the case for LRFFT collectors, who, they argued, would bear the biggest toll of the moratorium (Dalabajan 2009; Fabinyi 2009a). The moratorium was lifted shortly afterwards, with Provincial Ordinance 941 unimplemented.

The PCSD continued to be concerned about over-fishing, which led to the issuance of Resolution No. 07-340 in December of 2007. The resolution sought to establish a quota system for the export of live reef food fish, with a maximum allowable volume of 140 metric tons per year on the provincial scale. Since the passage of the resolution, considerable negotiation with the industry has occurred, primarily over how to allocate the quota among the traders. By mid-2011, the quota system was being subjected to another review, and had not yet been implemented.

Discussion

Government capacity and legal weaknesses

As the work of Dalabajan (2005, 2009) has indicated, the capacity to enforce legislation is an ongoing challenge in Palawan. Weaknesses in the judicial system, and the current regime of testing for sodium cyanide, for example, are usually not prosecuted. Dalabajan (2005) presented a striking statistic: despite an estimated 250,000 individual cyanide fishing trips between 1999 and 2002 in the Calamianes Islands, there was not a single successful conviction for cyanide fishing between 2001 and 2005.



Figure 2. Live reef food fish being loaded on an airplane at Coron airport, Calamianes Islands.

Problems of monitoring and accreditation are also clear. The trade in the eastern island municipality of Cagayancillo and in the remote, extreme southern municipalities of Palawan is virtually completely unmonitored and unregulated. It is unlikely that any attempt to monitor or regulate this trade will be successful until broader issues of governance and cross-border trade are addressed. A more recent concern involves the remarkable increase in the operation of fish cages for groupers and the ability of governments to successfully regulate this trend. Fishers supply fish cage owners with wild-caught juveniles, which are then placed in cages until they reach a marketable size. In the absence of full-cycle aquaculture, however, fish cages will hasten the decline of grouper stocks. A vast proportion of fish cage operations used for grouper grow-out are unaccredited, and the absence of PCSD accreditation means that the catch does not go through the standard recording system.

More generally, the legal framework for the LRFFT in Palawan is characterised by confusion and a lack of harmony between laws and different levels of jurisdiction. The industry has effectively argued, for example, that a prohibition against live reef fish exports in the Fisheries Code of 1998 does not apply, because of a lack of an administrative order from BFAR (Dalabajan 2005). Questions also remain about which levels of government have control over regulations relating to waters and marine resources. PCSD nominally has the power to make province-wide laws over everything to do with the environment and natural resources. However, in

practice, PCSD and the provincial council tend to work with individual municipalities, which argue that under the national Local Government Code of 1991, they have control of “municipal waters” — waters extending 15 km from shore. This means that any attempt to implement a uniform, province-wide system of regulation is likely to be a long and slow process of negotiation to get individual municipalities to institute the legislation. As Dalabajan has argued (2009), in 2006 municipalities were able to band together and force the provincial government to “blink first” and back down over its threat of a moratorium. With regard to the quota system, although the legislation was passed at the provincial level in December 2007, by mid-2009 no municipality had instituted a corresponding municipal ordinance. While decentralisation is usually regarded as a form of governance that lends itself to equitable and efficient patterns of resource management, in this instance the power of the municipalities has proven to be a notable obstacle in instituting any province-wide system of regulation.

The culture of fisheries governance in the Philippines

The problem is not only a failure to enforce regulations because of a lack of resources or weaknesses in legal frameworks, but also the issue of what is typically labelled “political will”, or a lack thereof. It is not the intent of this paper to suggest that local governments are unwilling or incapable of regulating the fishery. Indeed, the case of Puerto Princesa City, where the government has instituted a blanket ban on LRFFT activities since 1992, illustrates that regulation is seen as a need by some policy-makers and governments. However, there is an extremely high level of concern among many stakeholders — particularly among fishers — about the standards of fisheries governance in Palawan (Fabinyi 2009a). This is not always a simple issue, however. What is often simply labelled as a lack of “political will”, or even more simply as “corruption”, can be more helpfully broken down into three categories or patterns of governance.

First is the way that local politicians in the Philippines are pressured to address the concerns of fishers. Fisheries regulations are typically resisted and reshaped by fishers who appeal to concerns about livelihood and poverty (see Fabinyi 2009b for details). As many social scientists have noted, the idea of a “right to survive” (Szanton 1972), or that of a “basic rights discourse” (Kerkvliet 1990), is a very strongly-held value among local people in the Philippines, and

local politicians need to be seen as respecting these rights. Frequently, these rights are seen as more important than any more abstract or legalistic laws that may derive from the state (Fabinyi 2009b).

Second, there is a blatant conflict of interest among members of political classes with regard to live fish trading. In many municipalities, for example, prominent live fish traders are liberally represented within municipal councils. As one concerned observer commented on the potential for successfully regulating the trade in one municipality: “At the end of the day, nothing will happen because the people involved in the fishery are the people at the top.” This is certainly a cynical view, but one does not have to subscribe to such a pessimistic opinion to see that conflicts of interest are clearly present.

Third is the issue of more direct corruption. While no specific incidents of corruption are being alleged in this paper, many enforcement agencies are routinely accused by small-scale fishers in particular of specific incidents of extortion of legal fishers, and of accepting bribes from organised networks of illegal fishers (Fabinyi 2009a). Overall, the whole culture of fisheries governance means that any attempt at regulation will face strong institutional opposition.

Practices and perspectives of local fishers

Another set of factors working against regulation in Palawan is the dynamic nature of local fishing practices, and the perspectives of fishers about governance and regulation.⁴ Highly mobile, with flexible livelihood strategies, fishers often: 1) collect live fish in one municipality and then sell the fish in another municipality; 2) migrate seasonally to different municipalities; or, 3) as in the case of southern Palawan, sell the fish to traders who then transport them (undocumented) over the border to Malaysia (Daw et al. 2002). Linked to the mobility of LRFFT fishing practices is the fresh (i.e. dead) leopard coralgroupers fishery. Although there are only limited data on the extent of the fresh leopard coralgroupers fishery in Palawan, according to information provided by BFAR, the fresh leopard coralgroupers fishery may be at least as significant in terms of sales as the live leopard coralgroupers component of the LRFFT. Many of leopard coralgroupers that end up as exported fresh fish are the result of mortality from the LRFFT; however, there are also other fishers who target fresh leopard coralgroupers, specifically because of the relatively high price of fresh leopard coralgroupers compared with other fresh fish species — around PHP 600/kg (or

⁴ Clearly, in addition to the local factors emphasised in this paper, the forces driving the consumption of live fish in market countries and the increasing prices are of great significance for fishers. In Coron, shortly before the Chinese New Year in 2009, for example, prices to fishers reached PHP 3,100/kg, or USD 62/kg. Any long-term solution to addressing the sustainability of the LRFFT must address these issues.

USD12/kg) to fishers for export-quality product. This means that even if any system of regulation for the LRFFT is successfully implemented, it has the potential to push more fishers into the fresh leopard coral grouper trade, and hence may do little to prevent overexploitation of the most important species of the LRFFT in Palawan.

Related to fishers' practices are their perspectives about regulation that tend to discourage regulation of the LRFFT (see Fabinyi 2009a, 2009b, 2010). In particular, the view of many fishers is that authorities should focus much more attention on preventing illegal fishing with cyanide, as opposed to restricting the activities of small-scale fishers who use hook-and-line. The level of cynicism many fishers feel towards political processes means that broad regulations are often viewed as unfair and illegitimate.

An important factor behind these perspectives is the general lack of participation of fishers in the decision-making process. During the implementation of the quota system, for example, very few fishers even knew of its existence. Out of 115 fishers interviewed in 2009 (49 in March and 66 in June) in Coron municipality, only 6 individuals knew of the quota system (5.2%). So even if fishers' organisations may have been nominally represented in the decision-making process, in real terms the participation by fishers has been extremely limited. The lack of power among fishers in the decision-making process of the LRFFT is an issue that has been recognised for a long time in Palawan (see Padilla et al. 2003; Fabinyi 2009a). Importantly, the lack of participation by fishers in this process is not simply a matter of social justice. It is likely to increase the level of popular opposition to any regulations that are introduced. The mobilisation of fishers, and popular discontent with the perceived sudden way in which aspects of Provincial Ordinance 941 were introduced in 2006, was a primary factor why these regulations were never completely implemented (Fabinyi 2009a).

To simply condemn the industry and say that all industry players are ignoring the negative trends of the LRFFT would be overly simplistic. In many provincial summits such as those organised by PCSD and non-governmental organisations, one can see the passion among the fishers and some traders to work towards a sustainable industry. What is clear, however, is that some of the particular regulatory options being pursued have long faced, and will likely continue to face, powerful social factors that inhibit or derail regulation.

Conclusion

This paper has presented an analysis of the ways in which various policies designed to reform the LRFFT have historically played out against the

backdrop of the particular social characteristics of Palawan Province. In doing so, the goal has been to highlight some of the considerable disjunctures between policies and actual practices, and to show how any set of policies must take stock of, and be shaped to some extent by, these particular features of the local context. The paper has not focused on the failures of policy in order to be overly negative and critical; rather, the point has been to demonstrate the value of understanding the local social context when designing strategies to improve the sustainability of the LRFFT. This paper has focused on Palawan, but the problems of implementation and enforcement of policies are widespread across many developing countries. An appreciation of such local contexts is of importance for a range of countries in which the LRFFT takes place.

Efforts at regulating the LRFFT throughout the Asia-Pacific region have taken many forms, and many of these measures have been introduced in Palawan Province. While notable gains have been achieved in various parts of Palawan, there remain significant problems related to enforcement and implementation of these laws and policies. These problems are in large part due to particular features of the social landscape in Palawan itself, which have been emphasised in this paper, including a lack of government and legal capacity; the culture of fisheries governance in the Philippines; and the practices, perspectives and priorities of local fishers.

In this way, the paper has illustrated how policy interventions related to the LRFFT are just one of a number of factors that actually determine LRFFT practices "on the ground" in Palawan. The paper has aimed to unpack some of the "political and business dynamics" alluded to by Pomeroy et al. (2008:64), and to show why a greater recognition and understanding of such contexts is necessary to achieve the aims of sustainable regulation. Many of the organisations and individuals involved in the work of regulating fisheries such as the LRFFT in places such as the Philippines are, of course, aware of many of these issues in practical terms. The point is that these issues could be more explicitly analysed and more usefully applied to goals of sustainability. In Palawan at least, one important potential implication for policy is the need to strengthen particular institutions and organisations that can contribute to greater levels of policy enforcement. Given the historical weaknesses of regulatory actions, greater effort could be directed towards strengthening various governance institutions inside and outside of government. In Palawan, such actions could include greater levels of support for citizens' groups such as the *bantay dagat* (sea wardens), improving the technical capacities of formal law enforcement institutions, and addressing the weaknesses of judicial and legal institutions (Dalabajan 2005).

This analysis has argued that any path to more sustainable forms of governance of the LRFFT may need to more explicitly acknowledge the gaps between policies and practices that frequently exist. While managers and regulators are typically aware of many of these issues, there remains a need to understand in more detail the factors and reasons behind such gaps, the actual social practices and perspectives that drive patterns of resource use, and to evaluate any potential implications for policy. Importantly, the particular factors that shape the efficacy of new policies and laws will vary in different locations, pointing to the ongoing need for deeper understanding of and engagement with the local social contexts in which regulation is always embedded.

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